

COMPLAINANT v BAYER

Alleged disguised promotion of Xarelto

A complainant who described him/herself as a concerned UK health professional, complained that two videos, commissioned by Bayer and hosted on the 'Guidelines in Practice' website, were disguised promotion for Xarelto (rivaroxaban).

The complainant submitted that neither the disclaimer at the top or the bottom of the videos spelt out that they were promotional – the only clue was a link to prescribing information. The wording in the disclaimer stated 'commissioned' and 'suggested the topic' and so this appeared to be disguised promotion.

The detailed response from Bayer is given below.

The Panel noted that, at the outset, there was a statement on the webpage hosting the videos that the development of the Guidelines in Practice videos had been commissioned by Bayer with a more detailed description of the company's involvement at the bottom of each webpage. Readers' attention was also drawn, at the outset, to a link to prescribing information. In the Panel's view, whilst it might have caused confusion by referring to the videos as Guidelines in Practice videos, health professionals visiting the webpage at issue would be immediately aware that the videos were developed by Bayer and would be likely to assume that they would include material on Bayer's medicines and therefore be promotional. The Panel did not consider that the promotional nature of the videos had been disguised. No breach was ruled.

A complainant who described him/herself as a concerned UK health professional, complained that videos, commissioned by Bayer, which had been hosted on the 'Guidelines in Practice' website, were disguised promotion for Xarelto (rivaroxaban). Xarelto was indicated for the prevention of venous thromboembolism (VTE) in adult patients undergoing elective hip or knee replacement surgery and for the treatment of deep vein thrombosis (DVT) and pulmonary embolism (PE), and prevention of recurrent DVT and PE in adults.

COMPLAINT

The complainant drew attention to two videos hosted on the Guidelines in Practice website entitled 'Secondary event prevention and risk stratification in patients with symptomatic peripheral arterial disease' and 'Secondary event prevention and risk stratification in patients with stable coronary artery disease'. The complainant submitted that neither the disclaimer at the top or the bottom of the videos spelt out that they were promotional – the only clue was a link to prescribing information. The wording in the disclaimer stated 'commissioned' and 'suggested the topic' and so this appeared to be disguised promotion.

When writing to Bayer, the Authority asked it to consider the requirements of 12.1 of the Code.

RESPONSE

Bayer noted that the complaint concerned two webpages on the Guidelines in Practice website about risk stratification and prevention in patients with symptomatic peripheral arterial disease and stable coronary artery disease. The webpages, which had been commissioned and certified for promotional use, provided educational information and audio-visual content in the form of two short videos; one on secondary prevention and risk stratification in patients with symptomatic peripheral arterial disease and the other focusing on patients with stable coronary artery disease. The videos resided on the webpages that acted as hosting pages to the video content.

Bayer noted the complainant's concern that the disclaimer on the webpages did not spell out that the content was promotional. No additional reasoning was provided to support the allegation that the webpages appeared to be disguised promotion.

Bayer noted that on each webpage hosting the videos, the first information presented below the webpage title was the statement 'Commissioned by Bayer plc' and a paragraph that read 'The development of this Guidelines in Practice video has been commissioned by Bayer plc. Please see the bottom of the page for full disclaimer'.

There was then a prominent link that read 'View prescribing information'. A single click on this link took the reader to the Xarelto prescribing information. The fact that the complainant acknowledged the link to the prescribing information suggested that it was sufficiently clear and prominent enough to be identifiable.

At the bottom of the webpage there was then a comprehensive declaration of sponsorship which read:

'The development of this Guidelines in Practice video has been commissioned by Bayer plc. Bayer plc suggested the topic for the video, worked with [a named third party] to choose and commission the speakers, and approved all materials related to the video. The views and opinions expressed in the video are not necessarily those of Bayer plc or of Guidelines in Practice, its publishers, advisers, or advertisers.'

Bayer noted that the above declaration, as well as the Bayer logo and instructions on how to access the prescribing information, were also presented early in the first frames of the two videos themselves. The Bayer logo also appeared at the end of each video.

Bayer noted that the website owners had a standard approach when offering commissioned educational services to clients such as pharmaceutical companies and in that regard it provided a copy of the publisher's briefing sheet for clients which included an example disclaimer which was not dissimilar to that above.

Bayer noted that on the 'About Us' webpage of the Guidelines in Practice website, the website owners informed users and prospective members of its approach to presenting independent content vs content developed in partnership with a sponsor under the heading 'Independence and transparency' where it was stated that:

'The presence of the Guidelines in Practice independent content (IC) logo ensures you can be confident that an article has been developed solely between the expert author and Guidelines in Practice.'

If a piece of content has been developed in partnership with a sponsor, the IC logo will be absent and the involvement of the company/companies will always be explained in a disclaimer at the outset.'

Bayer considered that it had taken appropriate steps to comply with the Code. While the content on the webpages was developed for a medical educational purpose, the prominent declaration of Bayer's involvement with the content and the prominent link to the Xarelto prescribing information was consistent with promotional rather than non-promotional content. There was no use of misleading language or terminology (like 'non-promotional') on the webpages in question to imply that the material was intended to be perceived as non-promotional content.

Bayer stated that in accordance with its obligations under Clause 9.10, there was a clear declaration of sponsorship. On that basis, it could not reasonably be argued that health professionals viewing the material were unexpectedly subject to promotional content. Nor could it be construed that the content resembled independent editorial matter. On that basis Bayer considered that the content was not disguised promotion under Clause 12.1.

In conclusion, and for the reasons outlined above, Bayer considered that sufficient efforts were taken to declare its involvement with the content of the webpages and in its view the prominent provision of a link to the Xarelto prescribing information made it clear that material was promotional with a medical educational purpose and should have been perceived as such. Bayer denied a breach of Clause 12.1.

PANEL RULING

The Panel noted that promotional material did not need to be labelled as such, however, it must not be disguised, and should otherwise comply with the Code. The Panel noted that, at the outset, there was a statement on the webpage hosting the videos that the development of the Guidelines in Practice videos had been commissioned by Bayer with a more detailed description of the company's involvement at the bottom of each webpage. Readers' attention was also drawn, at the outset, to a link to prescribing information. In the Panel's view, whilst it might have caused confusion by referring to the videos as Guidelines in Practice videos, health professionals visiting the webpage at issue would be immediately aware that the videos were developed by Bayer and, on the balance of probabilities, would be likely to assume that they would include material on Bayer's medicines and therefore be promotional. The Panel did not consider that the promotional nature of the videos had been disguised. No breach of Clause 12.1 was ruled.

Complaint received **10 March 2020**

Case completed **17 June 2020**